Supreme Court of the United States,

RUSSELL SAGE, *et al.*, *vs.* THE CENTRAL RAILROAD OF IOWA. *et al.*	October Term, 1877. No. 937.

BRIEF OF N. A. COWDREY, FOR APPELLANTS.

Upon motion to Dismiss Appeal..... p. 5.

Upon motion to vacate supersedeas.....p. 9

Decree of August 31,1877, No. 937.....p. 13.

Decree of Oct. 22d, 1875, No. 450..... ...p. 18.

Petition for Appeal to Oct. Term, 1877, p. 24–29.

Petition for Appeal to Oct. Term, 1876.....p. 31.

Bonds on Appeal..... .....p. 27.

everybody else.—See 5th paragraph of decree of sale, made Oct. 22d, 1875.—A copy of decree, made Oct. 22d, 1875, is attached, marked exhibit "B"; this is the decree from which an appeal is pending, No. 450 Oct. Term, 1877.

The appellants in open Court, stating to the Court in writing that they were intervenors as bondholders in the cause, prayed an appeal from certain orders relating to contract debts, made, Oct. 21st, 1875, and from the order and decree, made Aug. 31st, 1877, the substance of which is above set forth, and a copy annexed as exhibit "E," p. 29, they also offered a good and sufficient bond, and asked that the same might operate as a *supersedeas*; the Circuit Court allowed the appeal, but refused the supersedeas asked for. Exhibit "E."

Whereupon the appellants afterward, viz., Sept. 15th. 1877, under Sec. 1007, U S. Rev. Stat applied to Mr. Justice Hunt for a supersedeas, and offered him a good and sufficient bond, which was approved by the Justice, and a supersedeas granted. Copies of petition and bond are annexed, marked exhibits "C" and "D," p. 22-24.

The Farmers' Loan & Trust Company, the supplemental complainants below, and certain bondholders *cestui que trust* represented by Mr. Ashhurst, *et al.*, who have no other standing or place in Court than such as they acquired by reason of their being heard in the Circuit Court in opposition to the exceptions filed by the appellants, join in a motion to dismiss appeal and to vacate supersedeas.

ARGUMENT ON MOTION TO DISMISS APPEAL.

1st. In answer to the 1st Point of the movers to dismiss—the appellants show that they were made parties to the suit. By the original bill of complaint brought by Alexander, a bondholder for all the bondholders.

By the order of January 14ht, 1876; the Circuit Court making such order has construed its own order, and allowed appellants to appear as intervenors in all subsequent proceeding.

By being allowed to file and argue exceptions to Master's Report.

By receiving and allowing a petition for an appeal in which it is recited that the appellants intervene by liberty of the Court.

The Circuit Court exercised its discretion and heard the appellants.

Cutting, *ex parte*, 4th Otto, 14.
Jordan, " " " " 248.

2d. The appellants had and have the right to become parties to the suit, without limitation or restriction, because they had proved an interest in the fund in the hands of the Court, and having the right to become parties and having been heard thereon, they had the right to take an appeal if aggrieved by the action of the Court.

4th Otto, 467, Hinckly vs. Gilman, &c., R. R.

This is a proceeding *in rem*, the bondholders are treated as claimants in the decree appealed from.

2d Daniels, Chancery Pr. 1460.

The decree is not only a decree confirming the sale, but one of distribution; it directs the purchaser to act for the appellants among others, and to distribute the purchase to the appellants and other bondholders.

The Circuit Court ordered the distribution of a fund in its possession of $5,192,390, in which fund the record shows the appellants to be interested to the amount of over $200,000. The appellants claim to be aggrieved by the order of distribution of that fund. They appear in Court, set forth their claims, and specifically make themselves parties to the suit by filing exceptions to the proceeding, are heard, and claim redress for their grievances.

1 Wallace, 655; Blossom v. R. R. C.
4th Otto, 248, Jordan *ex parte*.

A receiver may appeal, though not a party to the suit.

4 Otto, 467, Hinckly vs. Gilman, &c., R. R. Co.

The Circuit Court, having conceded the right of the appellants to be heard in that Court, entitles them to appeal if aggrieved. If the appellants had a legal claim to the Fund, they have a right to contest the claims of others conflicting with their rights; the making a decree does not end the right of intervention; that survives the decree and involves the right of appeal.

2 Daniels, Ch. Pr. 1460.
6 Howard, 201, Forgay vs. Conrad.
4 Otto, 248, Jordan *ex parte*.

In 24 Howard, 186, Kellogg vs. Forsyth, a landlord was allowed to appeal where the suit was against the tenant.

For the first time in the history of the case in the Circuit Court, that Court by its decree of August 31st, 1877, directs the distribution of a portion of the trust property in its hands for administration. The Court treated the fund then as one for distribution, and then fixed some amounts which should be paid prior to others. It then first exercised its judicial

authority—not arbitrary or discretionary authority—but judicial authority. In doing so it injured the appellants.

11 Wall., 267, McVeigh vs. U. S.
4 Otto, 248, Jordan *ex parte*.

This Court will suspend its own rules to promote or to do ustice. 20 Howard, 254, U. S. vs. Breitling. In that case the promotion of justice was to retain an appeal, supposed to have been deficient in the bill of exceptions. The ample power given to this Court in Sec. 701 U. S. Rev. Statutes were given that they might have the power to do, and do justice; that is, hear the grievances of parties and determine the same.

The duties and interests of the Trustee who may have acted for the Appellant terminated and came to an end when the decree of foreclosure and sale was obtained. The Trustee had no other authority to act for the bondholders than such as is conferred upon it by the deed of trust (see opinion of Dillon' Judge, page 43 of printed record). In this case there is a provision in the deed of trust, authorizing the Trustee under certain circumstances to buy the mortgaged premises; but there can be no pretense that in this respect the decree follows the deed of trust. Whatever power the Trustee had exercised after decree entered was conferred by the Court, and not by the deed of trust or agreement of the parties. Hence at that point in the litigation the bondholders themselves—the appellants—became parties in interest.

3d. The second objection of the movers does not seem to require any answer. The parties alluded to were in Court, and had notice of the appeal.

As to the 3d and 4th objections of the movers, the order or decree is not only one of confirmation of sale, but it is very much more, as seen by referring to it. It disposes of substantial rights of the appellants, and being aggrieved by the disposition thereof made by the Court, they appeal for redress.

4th Otto, 467. Hinckly v. Gilman, &c., R. R.

Hence we plead and claim that the Court should, under the authority given by Sec. 701, exercise that authority, either by ordering a bond now to be given to stop the further action of the Circuit Court, or by consolidating the two Appeals Nos. 450 and 937, and issue a writ of prohibitation to the Circuit Court until No. 450 is acted upon by this Court. No great delay will occur by adopting this suggestion. No. 450 will be reached in March or April, if this Court makes the same rate of progress for the next three months it has for the last two months. No damage will be sustained by any one, because the Circuit Court is itself in possession of the mortgaged property.

The appellants here cannot account, as the appellees do, for the motives which actuated Judge Dillon in illogically granting an appeal, and refusing a supersedeas. If it is allowable to comment on his motives here, as the movers do in their brief, (p. 5–6,) the appellants would suggest, that he had been so bull-dozed by the publications of some of the appellees, as to make him very careless of the rights of the appellants.

No *supersedeas* was ever asked upon the orders of Oct 21st, 1875, from either the Circuit Court, Judge Dillon, or Justice Hunt; the argument of the movers upon that erroneous statement of the case, by themselves on page 6 of mover's brief, seems unnecessary. See petitions for appeal exhibits "C" and "E," p. ~~23–26~~ 24–29

The appellants had a perfect right by the Statute Laws of the U. S, sec. 1007, to apply to a Justice of this Court for a supersedeas *at any time:* there is no statute requiring them to apply to the Circuit Court, or, being refused by that Court, prohibiting them from applying to each and every Justice of this Court. "The law favors the vigilant."

The authorities cited by movers on p. 6 and 7 of brief, do not sustain the use made of them. They are:

12 Wall., 86, French v. Shoemaker.
21 Wall., 7, Jerome v. McCarthy.
23 Wall., 507, Railroad v. Wiswell.

Parties aggrieved by action of Circuit Courts may have as many appeals as they have separate grievances, by reason of separate orders or decrees of Circuit Courts. This Court may consolidate the appeals, or hear them all at the same time.

No. 450 is an appeal from a decree ordering the sale of a railroad, and giving some general directions as to the distribution of the funds in its hands. See Exhibit B, p. 18, and petition for appeal, Exhibit F, p. 28-31.

No. 937 is an appeal: 1st. From certain orders directing certain contract debts to become receiver's debts.

2d. From a final decree saying how said receiver's debts, made by orders of the Court, shall be preferred in payment to the appellant's claim. See Exhibit C, p. 24 and E, p. 26. It also of necessity embraces other matters, because the decree embraced them. It appeals from the order confirming the sale of the R. R., because there is no money paid by the purchaser. It is a mere colorable sale. The appellants get nothing by it, although the road is nominally sold for over $5,000,000.

(a) This appeal differs from Silsby vs. Foot, 20 Howard, 290, and also from Wheeler vs. Harris, 13 Wall, 51. In both of those cases two appeals were taken from the same order or judgment. Our appeals, Nos. 450 and 937, are from different orders or decrees, and both relate to different matters, as will be more fully seen by reference to the petitions for appeal in each case. Exhibits C, E and F.

In this case the appellant has an absolute right of appeal, as shown above in argument to dismiss appeal.

Cutting *ex parte*, 4th Otto, 14, does not sustain the use of it made by the movers.

Cutting was not a party to the record, and therefore could not appeal. The appellants in this case were parties, and were recognized and treated as such by the Circuit Court, viz:

1st. In the original and supplemental complaint. p. 1. 7. 25. & 37 of Printed Record

(a) by the decree of Oct. 22 & 75 the Court undertook to preserve the priority of the bondholders p. 20-

by decree of Aug. 31. 77 the Court determined certain contract debts to be liens prior to the 1st Mortgage Bonds - p. 17

2d. In the original order making them parties.

3d. In allowing them to file exceptions, and hearing their arguments thereon.

4th. In the order of August 31st, 1877, appealed from.

5th. In receiving and allowing their petition for an appeal.

6th. In having proved an interest in the fund being distributed.

This Court in the case of Orchard vs. Hughes, Dec. Term, 1863, refused to dismiss an appeal from an order confirming a sale under a decree of foreclosure.

1 Wall., 657, Blossom vs. R. R.

This Court is not disposed to deprive appellants of the right to have the merits of their cases examined on a full hearing, which cannot be done upon a motion to dismiss.

1 Wall., 657, Blossom vs. R. R.
20 Howard, 254, U. S. vs. Breitling.

If appellants have complied with the law, they are entitled to a supersedeas without regard to the views of the Circuit or of this Court as to the merits of the appeal.

4. Otto, 672, Goddard vs. Ordway.

The motion to vacate supersedeas should be denied, or if granted should be with liberty to the appellant to file a bond *now for then*, or with a monition to the Circuit Court to suspend further execution of the order or decrees of Oct. 22d, 1875, and Aug. 31, 1877—until this Court has heard and determined the appeals from the Circuit Court.

N. A. COWDREY,

Counsel for Appellant.

EXHIBIT "A."

ATTACHED TO APPELLANT'S BRIEF, IN No. 937, OCT. TERM, 1877.

IN THE CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF IOWA.

THE FARMERS' LOAN & TRUST COMPANY, Trustee, etc.,

vs.

THE CENTRAL RAILROAD CO., OF IOWA.

Order of Confirmation and Transfer, etc.

And now, on this 31st day of August, 1877, it being of the May Term, (adjourned,) this cause came on for hearing upon the report of sale, made by the special master on the 18th day of July, 1877, pursuant to the decree rendered herein October 22d, 1875, and the motion of complainant for confirmation of said sale, *and upon the exceptions filed to said report by Russell Sage and others;* and upon the motion by the beneficiaries of the purchasers at said sale, a corporation organized under the decree for the purpose of acquiring the property, approved by a majority of the first mortgage bondholders and sanctioned by the Court, and called The Central Iowa Railway Company, for an order of transfer and delivery of the property sold to said purchaser, and also upon the motion by said newly organized Railway Company for an order for the payment of the debts against said property, contracted by the receiver, in certificates of indebtedness or debentures, which shall be a first and paramount lien upon all the property transferred. The Court finds that said sale was made

in strict accordance with the decree ; the exceptions thereto are overruled ; and said sale is hereby confirmed, and the deed made and now exhibited to the Court by the special master, is hereby approved and ordered to be delivered and recorded.

The Court further finds, that the debts contracted by the receiver and now unpaid, amount to the sum of about $472,-389, and *that the same constitutes a first and paramount lien upon all the property sold;* that it is neither desirable nor practicable to continue said property under the control of the receiver for the purpose of making net earnings for the payment of said debts, and it appearing that all the creditors have been duly notified by printed notices sent by mail by the Clerk of this Court to each of them, that this application for the transfer and delivery of said property to the purchaser, and for an order for the payment of their several debts in certificates, would be made at this time, and no sufficient cause being shown against such order for transfer and payment.

It is ordered, adjudged, and decreed that the Receiver, Hon. J. B. Grinnell, transfer and deliver possession of all said property of the Central Rail Road Company of Iowa heretofore received by him, and all that conveyed by the deed of the Special Master under the sale aforesaid, together with all supplies and other property acquired by the Receiver to the newly organized company, the Central Iowa Railway Company, and shall put said purchaser in full possession and control thereof.

It is further ordered and decreed that the transfer and delivery of such possession of said property shall not remove, discharge, defeat, or in any way affect the right, power, authority or jurisdiction of this Court over said property or the proceeds and earnings arising therefrom. But the said Central Iowa Railway Company shall hold all said property as *quasi* receiver, until the payment of all the debts contracted by the Receiver, Hon. J. B. Grinnell, are fully paid, or it is otherwise ordered by this Court, and the said purchaser, The Central Iowa Railway Company will, until all said debts are

paid, make and file with the Clerk of this Court, on or before the 12th day of each month, a full and duly verified statement of the business done the previous month, including and specifying the amount of gross earnings, and the expenses of operating, repairs, etc., and a statement of the amount of receiver's debts paid, and to whom paid. And when all said receiver's debts are fully paid, and the proper vouchers therefor are filed in Court, a further order will be made, after due notice, discharging said property from judicial control, and fully confirming and quieting the possession and title of said Central Railway Company in and to all said property.

It is further ordered and decreed, that the debts contracted by the receiver are, and are hereby, made and declared to be a first and paramount lien upon all said property, and all additions thereto, to all other liens, and to the title acquired by the purchaser at the sale, and conveyed to the Central Iowa Railway Company, and the same will be by this Court maintained and enforced as such, by all necessary and proper orders hereafter to be made, if need be, from time to time, for the payment of such debts and the enforcement of the lien hereby retained, by sale or otherwise, to secure full and certain payment thereof, without other action or any independent proceedings.

It is further ordered and decreed, that the Central Iowa Railway Company shall pay the said debts of the receiver, and that the creditors of said receiver shall accept payment in certificates of indebtedness or debentures in three equal installments, unless otherwise agreed between the purchaser and the creditor, at six, twelve, and eighteen months from September 1, 1877, which certificates shall be negotiable under the law merchant, and shall draw interest at the rate of eight per cent. per annum, payable semi-annually, as per coupons annexed, and shall, both principal and interest, be payable at the Union National Bank, Chicago, and shall be signed by the president of the Central Iowa Railway Company, and sealed with the seal of said company, and shall be substantially in the following form :

$——— MARSHALLTOWN, IOWA, Sept. 1, 1877.

Twelve months after date, unless sooner paid, for value re-

ceived, The Central Iowa Railway Company agree and promise to pay..... ....or order, the sum of .....dollars, with interest at the rate of eight per cent. per annum, payable semi-annually, as per coupons hereto annexed, at the Union National Bank, Chicago. This certificate is negotiable under the law merchant, and is issued under and pursuant to an order of the Circuit Court of the United States for the District of Iowa, made on the 29th day of August, 1877, in the case of the Farmers' Loan and Trust Company, against the Central Railroad Company of Iowa *et al.*, for the purpose of paying the indebtedness contracted by the receiver during the pendency of said action, and in order to secure, beyond a peradventure, the payment hereof, (and of all its series, amounting to $192,00*) the same is made the first and paramount lien upon all the property of the Central Railroad Company of Iowa, which was sold under the decree of foreclosure rendered in the above named cause, and which property has been conveyed to the maker hereof, The Central Iowa Railway Company, the said court retaining authority and jurisdiction over said company and property, for the purpose of securing the payment hereof, and of enforcing the lien therefor without other and independent action. This certificate is payable in one year from date, or sooner, at the option of the maker, after thirty days' notice to the payee hereof by mail, and by three insertions in the Chicago Tribune. In testimony whereof the said Central Iowa Railway Company has hereto caused its seal to be affixed, and has further authenticated the same by the genuine signature of its President affixed hereto, on the day and date first above written.

No.——— ————*President.*

FIRST COUPON.

$——— MARSHALLTOWN, IOWA, Sept, 1, 1877.

Six months after date the Central Iowa Railway promises to pay the holder hereof————Dollars, at the Union National Bank, Chicago, being the semi-annual interest on

Certificate No.———, issued for the payment of Receiver's debts, unless said Certificate and this Coupon pro rata are sooner paid. In testimony whereof the President of said Central Iowa Railway Company has hereto affixed his genuine signature, No.—— ———— President, *said Certificate shall constitute the first and paramount lien upon all the property sold under the former decree herein, and the additions thereto, and shall be enforced, if need be, in the manner hereinbefore specified.*

It is further ordered and decreed that the liens and equities of the parties contemplated and specified by paragraph *Eighth* of the original decree rendered October 22, 1875, shall be paid off and discharged by the Central Iowa Railway Company as fast as the net earnings of said property will allow, after providing for or meeting the Certificates of the indebtedness herein authorized; and the said Central Iowa Railway Company is hereby forbidden and prohibited from making any dividends among the beneficiaries of said Company until all said liens and equities are fully satisfied and discharged.

It is further ordered and decreed that for the purpose of fully settling and confirming the rights and equities of all the parties in interest herein under the decree, and the sale of the Rail Road property pursuant thereto, and the rights and equities of the several parties under the new organization. The Central Iowa Railway Company, to which the property has been conveyed by the Trustee, this cause is continued till the next term of this Court, and the said Central Iowa Railway Company will report to this Court at that term for its approval and sanction all instruments, deeds, mortgages, certificates of stock, etc., etc., which shall be necessary and proper under the decree and sale, for the purpose of fully effectuating the provisions of said decree, and full control and jurisdiction of said Cause, and all the parties thereto, and the property, is reserved.

EXHIBIT "B."

ATTACHED TO APPELLANT'S BRIEF IN No. 937, OCT. TERM, 1877.

DECREE OF OCTOBER 22d, 1875.

Appealed from and pending. Docket No. 450, Oct. Term, 1877

IN THE U. S. CIRCUIT COURT,

FOR THE DISTRICT OF IOWA, OCTOBER TERM, 1875.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee,

vs.

THE CENTRAL RAILROAD COMPANY OF IOWA.

No. 501.—*Equity.*

This cause coming on to be heard upon the pleadings, the proofs taken, and the reports of the Master, Lewis M. Fisher, heretofore filed in said cause, and the several parties in interest appearing by counsel, the cause was submitted and taken under advisement by the Court, and now said Court finds, orders and decrees:

First.—That the first mortgage in the bill set forth was duly executed and delivered to complainant, as Trustee for the owners of the bonds therein described, on the 15th day of July, 1869, for the purpose of securing the payment, principal and interest, of the certain bonds of said Central Railroad Company of Iowa, amounting in the aggregate to the total sum of $3,700,000.

That default in payment of the interest accruing on said bonds has been made, there being now past due the sum of

$623,334.99, up to October 15th, 1875, which amount thus due, together with the principal sum of $3,700,000, forms the first and paramount mortgage now upon the property in the bill described. That default has been made in the performance of the conditions of said mortgage, through the non-payment of said interest as aforesaid, entitling complainants to a decree of foreclosure, and the Court finds there is due on said mortgage for principal, and interest, the sum of $4,623,334.99, in gold, on the 15th of October, 1875, which now it is ordered that defendant, the Central Railroad Company of Iowa, shall pay in ten days from this date, with seven per cent. interest, in gold, from the 15th of October, 1875; and if said defendant shall not pay the same, then the mortgages of the second and third mortgage and said judgment creditors, or any of them, in the order of their respective liens, shall pay the same, and upon such payment, with costs, the said plaintiffs shall satisfy and discharge said mortgage debt, interest and costs, and in default of said payment of any of said parties, their equity of redemption in said premises is forever barred and foreclosed.

Second.—That the second mortgage in the bill described was duly executed and delivered to complainant, as Trustee for the owners of the bonds therein described, on the 15th day April, 1871, for the purpose of securing the payment, principal and interest, of the certain bonds of respondent, in said mortgage described, amounting in the aggregate to the total sum of $925,000; that there is now justly owing to the holders of said bonds the sum of $1,136,246.86, including principal and unpaid interest up to October 15th, 1875.

That the said Second Mortgage, and the bonds secured thereby, are a lien upon the property of respondent in said bill described, dating from the said 15th day of April, 1871, being next in priority to the lien of said First Mortgage herein before described. That said respondent has made default in payment of the interest coming due upon said several bonds secured by said mortgage,

Third.—That the Third Mortgage in the bill described was executed, and delivered by respondent to the complainant as Trustee, on the 15th day of May, 1872, for the purpose of securing payment of certain Bonds in said mortgage described.

That there is now outstanding $420,000 of the Bonds secured by said Third Mortgage.

Fourth.—The Court further finds, that with the view to prevent a sacrifice of the mortgaged property by a forced sale, in case of default, it was expressly agreed and stipulated in said First Mortgage or Trust Deed, that in case of any judicial foreclosure sale of the mortgaged property, under decree of court upon request of a majority of the bondholders, the said Trustee should purchase the premises in the mortgage described for the use and benefit of the bondholders, and that upon such purchase, the title of said property should vest in said Trustee, and that no bondholder should have any claim to the premises or to the proceeds thereof except for his *pro rata* share of the proceeds of said purchased premises, as represented in a new company or corporation, to be formed and organized upon such terms, conditions and limitations, and in such manner as the holders of a majority of said outstanding First Mortgage Bonds secured by said mortgage should in writing request or direct.

That for the purpose of carrying out these promises in said mortgage contained, and in view of the fact found by the master and confirmed by the Court, that the mortgaged property will not sell in cash for near enough to pay the amount due thereon ; and that the several parties in interest, including the First, Second and Third Mortgage bondholders, general creditors and stockholders in said Central Railroad Company of Iowa, have united in asking the Court to so order the foreclosure and sale of said mortgaged property as to preserve the priority of the First Mortgage bondholders, and at the same time permit the holders of the other subsequent liens and interests to participate in the benefit of such sale and forclosure, it is therefore further ordered and decreed : That Lewis M.

Fisher be, and is, hereby appointed a Master, for the purpose of making and conducting the sale under the decree of said mortgaged property, the same to be sold under the provisions of said First Mortgage in the bill described.

The said sale to be made forthwith, in default to pay as herein decreed, at the front door of the county court house, in the city of Marshalltown, Iowa, four weeks' notice of the time and place of said sale to be given by said Master, by publishing notice thereof in The Financier, New York, and in Des Moines Register, and one newspaper published in Marshalltown, Iowa. That such property be sold to the highest and best bidder; and that the Master make full report of his proceedings to this Court, for its consideration and approval. The said sale so made by said Master not to be deemed to be final until approved by this Court.

Fifth.—That the said Farmers' Loan and Trust Company, complainant herein, for the purpose of carrying out the agreement of the parties to said mortgage, is hereby authorized and directed to bid at the sale of said mortgaged property as Trustee for the first mortgage bondholders bidding thereat, at least the amount of principal and interest of said First Mortgage Bonds.

That if said Trustee, as aforesaid, shall become the purchaser of said property at such sale, the title shall pass absolutely to said Trustee, subject, however, to the trusts herein indicated on behalf of the several parties in interest, being the First, Second and Third Mortgage bondholders, creditors and stockholders of the Central Railroad Company of Iowa; and said property shall be conveyed by said Trustee to a corporation organized, or to be organized, for the purpose of acquiring said property, under the provisions of said First Mortgage, and of this decree, and to be approved by a majority of said First Mortgage bondholders, in which said corporation, the controlling interest and power of management shall be given to the First Mortgage bondholders in such a manner as the majority of such First Mortgage bondholders shall indicate and

provide, and in which the Second Mortgage bondholders shall receive a second class of stock for the full amount, principal and interest, of said Second Mortgage bonds; and in which corporation the Third Mortgage bondholders and general creditors shall receive common stock at par for the respective amounts due them; and in which the stockholders of the defendant shall receive common stock at the rate of one dollar in the new corporation for every three dollars of stock held by them in the defendant corporation.

It is further ordered that said Trustee shall make full report of its proceedings under this decree to this Court, and shall submit the conveyance to be made to the new corporation herein provided for, together with the articles of incorporation of said company, to this Court, for approval and confirmation.

Sixth.—That if any party, other than the complainant, should become the purchaser of said property at such sale, such purchaser shall deposit with the Master, so soon as said property is struck off to him, the sum of $100,000 in gold as earnest money. And if such purchaser shall fail so to do, such failure shall be deemed a withdrawal of his bid, and said Master shall forthwith again offer said property for sale under the provisions of this decree.

That, as it is impossible to properly separate said property into parcels, the Master is directed to sell the said mortgaged property and everything covered by the mortgage together as an entirety.

Seventh.—That the owners of said Second and Third Mortgage Bonds, the general creditors and stockholders of respondent shall have the right to redeem said mortgaged property at any time within one year from the date of said sale, but if said property is not redeemed within said year from the date of said sale, then the right of redemption of said parties and all of them shall be forever barred and foreclosed. Said redemption herein last named, shall be the amount of principal and interest herein named with ten per cent. interest in gold,

Eighth.—That the right of the several parties to this suit claiming liens by judgment or otherwise upon the property of defendants, and of the several parties claiming rights or equities in and to said property, or any property in the use of said railroad company, or any part thereof, by virtue of contracts, or cases whereby material, labor, or property has been furnished for, or placed upon, said defendant's road, shall not be affected by this decree, the same being taken subject to the right and equities of said parties as the same may be established and declared hereafter by this Court.

Ninth.—That John N. Rogers be and is hereby appointed Special Master to ascertain and report to this Court the proper and total amount of costs, fees and expenses attending these foreclosure proceedings, which said costs, fees, and expenses shall be paid out of any funds in the hands of the Receiver not otherwise appropriated, and any balance left unpaid shall be a lien upon said mortgaged property in the hands of the Trustee, and payment thereof shall be required of said Trustee before delivering over said property to any company organized to receive and hold the same under the provisions of the Trust Deed, and of this decree.

(Signed) JOHN F. DILLON,

Judge.

Endorsed: Filed October 22, 1875.

GEORGE B. CORKHILL,

Clerk.

EXHIBIT "C."

COPY OF PETITION TO MR. JUSTICE HUNT, SEPT. 15, 1877.

SUPREME COURT OF THE UNITED STATES.

FARMERS' LOAN AND TRUST COMPANY,
Complainants,

RUSSELL SAGE, JAMES BUELL AND N. A. COWDREY, Intervenors,
Complainants,

vs.

CENTRAL RAILROAD OF IOWA *et al*,
Defendants.

Petition of Russell Sage, James Buell and N. A. Cowdrey, Intervenors, for approval of bond on appeal to operate as a supersedeas bond.

To the Honorable Ward Hunt, Associate Judge, Supreme Court of the United States.

The Petition of Russell Sage, James Buell and N. A. Cowdrey, all citizens of the City and State of New York, respectfully show:

That the Circuit Court of the United States, for the District of Iowa, has made an order or decree, in the above entitled cause, at its May Term 1877, viz: August 31, 1877, confirming the sale of the Railroad of the defendants, and ordering a distribution of the proceeds of the sale.

That your petitioners were, and are injured and aggrieved

by said orders and decrees, and in open court took an appeal to the Supreme Court of the United States, which appeal was then and there allowed by the Court, but no supersedeas was given or approved.

Your petitioners now desire to have the execution of said orders and decrees stayed, until the Supreme Court has determined said appeal. And here tender to your honor a good and sufficient bond in the penal sum of $20,000, which they pray your honor to approve, and allow the same to operate as a supersedeas bond, in the above entitled cause.

Your petitioners further show, that the action is one to foreclose a Railroad Mortgage, which mortgage covers the entire property of the defendant, The Central Railroad of Iowa; that the said Company is a bankrupt Company, and wholly unable to pay its debts; that said United States Circuit Court has heretofore appointed its Receiver, who is now, and since 1874 has been, in possession of the entire property of the said defendant, and is operating said Railroad under and in pursuance of the orders of said Circuit Court; that no party to the suit can suffer damages by reason of said appeal and supersedeas, because the Court is in possession of the premises, and will protect all parties in interest.

That said Court made an order or decree of foreclosure in said entitled suit on the 22d day of Obtober, 1875, and also a similar order on the 14th day of January, 1876, from which orders and decrees, your petitioners took an appeal to the October Term, 1876, of the Supreme Court of the United States, which appeal is now pending in said Court, and will be duly considered when reached on its calendar or docket; that said Supreme Court, at its last term, retained the appeal, but held that the bond was not given in time to act as a supersedeas bond, wherefore your petitioners now have appealed from the decree confirming the sale of said road, pursuant to the decree of foreclosure, and respectfully petition

your honor to allow a stay of the execution of the decree confirming the sale.

And your petitioners, as in duty bound, will ever pray.

NEW YORK, Sept. 15th, 1877, ss.

RUSSELL SAGE.
JAMES BUELL.
N. A. COWDREY.

City and State of New York, ss.

Sept. 15th, 1877.

Personally appeared before the undersigned authority, Russell Sage, James Buell and N. A. Cowdrey, and each for himself made oath, that the foregoing petition is true.

Notary Public.

EXHIBIT "D."

COPY OF BOND AND SUPERSEDEAS, SEPT. 17th, 1877.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF IOWA.

THE FARMERS' LOAN AND TRUST COMPANY, *Complainants,* RUSSELL SAGE, JAMES BUELL, and N. A. COWDREY, Intervenors, *Complainants.* *vs.* THE CENTRAL RAILROAD COMPANY, OF IOWA, and others, *Defendants.*	*In Equity.* *No.* 501. *May Term*, 1877.

BOND ON APPEAL.

Know all men by these presents, that we, Russell Sage, James Buell, and N. A. Cowdrey, are held and firmly bound unto the Clerk of the Circuit Court of the United States, for the District of Iowa, in trust, for the parties to the above-named suit, as their interest may appear, in the sum of twenty thousand dollars, lawful money of the United States, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally.

The condition of this bond is such that, whereas at a term of the Circuit Court of the United States, for the District of Iowa, held on the second Monday of May, 1877, viz: August

31, 1877, in the suit above named, depending in said court, by which the intervenors in said case were injured and aggrieved, as more fully set forth in their petition asking for an appeal from said orders and decrees ;

And the said intervenors having in open court asked for and obtained an appeal from said orders and decrees to the Supreme Court of the United States, and filed a copy thereof in the office of the Clerk of said Circuit Court, for the District of Iowa,

Now, therefore, if said Intervenors, or either of them, shall prosecute said appeal to effect and answer all damages and costs, if said appeal is not made good, then this obligation to be void, otherwise to remain in full force and virtue.

Witness our hands and seals at the city of New York, this 15th day of September, 1877.

RUSSELL SAGE, (L. S.)
JAMES BUELL, (L. S.)
N. A. COWDREY, (L. S.)

Approved by me to operate as a supersedeas when the same is filed in the office of the Clerk of the Circuit Court of the United States, at Des Moines, Iowa, Sept. 17th, 1877.

WARD HUNT,

Associate Justice Supreme Court of the United States.

EXHIBIT "E."

APPLICATION FOR AN APPEAL TO THE CIRCUIT COURT.

CIRCUIT COURT OF THE U. S., DISTRICT OF IOWA.

FARMERS' LOAN AND TRUST COMPANY, Trustee,

vs.

THE CENTRAL RAILROAD OF IOWA *et al.*

May Term, 1877.

Application of Russell Sage, James Buell and N. A. Cowdrey, for an appeal from certain orders made in open Court, August 31st, 1877.

Now comes Russell Sage, James Buell and N. A. Cowdrey, by liberty of the Court, intervenors in the above entitled cause, and represent to this Court that they have requested the complainant to take the appeal herein asked for, which request the complainant refused; therefore, in their own behalf, and in behalf of all the bondholders, *cestui que trust* of the complainant in this cause, and respectfully in open Court, apply for an appeal from certain orders and decrees hereinbelow named, to the next term of the Supreme Court of the United States, to be held at the city of Washington, on the 2d Monday in October, 1877, viz:

From the decree or order made October 21st, 1875, in the above entitled cause, directing the payment of $125,736 to John S. Newberry, James McWilliams, and Warren Creamer, and declaring the same to be a lien upon the railroad and premises described id the complaint prior to the bonds secured by mortgage to the complainant.

From the decree or order of this Court made October 21st

1875, directing the receiver to pay Horace Abbott, Thomas Kensett, John S. Gilman and Isaac M. Cate, the sum of $44,769.78, before the payment of any money to such bond-holders.

From the decree or order of this Court, made October 21st, 1875, directing the receiver to pay the Munsey Car Company, the sum of $7,031.74, before the payment of any money to said bond-holders.

From the decree or order of this Court, made October 21st, 1875, directing the receiver to pay to the Haskell & Baker Car Company, the sum of $6,571.18, before the payment of any money to said bond-holders.

And from the order and decree of this Court, made August 31st, 1877, confirming the sale of the mortgaged premises, made and claimed in pursuance of an order of this Court, made October 22d, 1875, and ordering a distribution of the proceeds of said sale.

They herewith tender to the Court a good and sufficient bond on said appeal, and pray that the same may be approved and allowed as a supersedeas bond, on the order or decree of this Court confirming said sale, and distributing the proceed thereof. made as above recited on said 31st day of August, 1877.

And your applicant, as in duty bound, will ever pray.

August 31, 1877.

RUSSELL SAGE,
JAMES BUELL,
N. A. COWDREY.
By N. A. COWDREY, *Solicitor*.

Appeal allowed upon the filing of a penal bond to the Clerk of this Court in trust for whom it may concern, on or before the 1st day of October, 1877, in the penal sum of $1,000, bond to be apyreved by a judge of this Court.

EXHIBIT F.

Petition of Russell Sage, James Buell and N. A. Cowdrey, intervenors, for an appeal, January 21st, 1876.

CIRCUIT COURT OF THE UNITED STATES,

District of Iowa.

The Farmers' Loan and Trust Company,
Complainants.

Russell Sage, James Buell and N. A. Cowdrey,
Intervenors,

vs.

The Central Railroad Company, of Iowa, *et al.*

To the Honorable Judges of the above entitled Court, and to the Honorable Samuel F. Miller, Associate Justice of the Supreme Court of the United States.

The Petition of Russell Sage, James Buell, and N. A. Cowdrey, all citizens of the City and State of New York, respectfully shows to your honors:

That the above entitled Court has made an order or decree at its October Term, 1875, viz.: January 14th, 1876, allowing your petitioners to intervene in said case, and to take an appeal, if they so elect, from the decree of that Court, made in the above entitled cause, October 22d, 1875; but continued for further hearing by the presiding Justice, by an order made at Chambers at the City of St. Paul, December 16th, 1875, which further hearing was had in open court, at Des Moines, and determined by the Court, January 14th, 1876, all

of which more fully appears by said order or decree on file in this Court, to which reference is made.

That your petitioners are injured and aggrieved by said order or decree, made October 22d, 1875, and reaffirmed January 14th, 1876, and elect to take an appeal therefrom to the Supreme Court of the United States.

They also appeal from so much of said order or decree entered in the above entitled case, as limits their right to be a party in said suit to the right to appeal as therein named, and to so much of said order or decree as requires your petitioners if they desire said appeal to operate as a supersedeas, to give a bond in the sum of $1,000,000 within thirty days from January 14th, 1876.

Your petitioners aver that the action is to foreclose a railroad mortgage, which mortgage covers the entire property of the defendant, the Central Railroad Company, of Iowa; that said Railroad Company is a bankrupt company, wholly unable to pay its debt; that said Court has heretofore appointed its Receiver, who is in possession of the entire property of said defendant, and is operating said railroad under and in pursuance of the orders of said Circuit Court.

That there are three mortgages upon the premises, all of which are being foreclosed. That your petitioners are *cestui que trust* of the complainant under the First Mortgage.

That none of the mortgages have any marketable or quotable value, except the First Mortgage. That the said First Mortgage amounts in the aggregate to the sum of $3,700,000 at its par or face value. That its marketable or saleable value does not exceed 35 per cent, or say $1,275,000. That sales have been made since the property has been in the hands of the Court at 27½ per cent. That the earnings of the road will be applied by the Court to the reduction of the amount due on the First Mortgages. So that no party to said suit can suffer damages by reason of said appeal.

That the complainants in this case have given their written assent to your petitioners to take this appeal.

Wherefore your petitioners pray for an appeal to the Supreme Court of the United States from said orders and decrees of said Circuit Court, made on said 22d day of October, 1875, and on said 14th day of January, 1876, as above set forth. They also ask that said appeal may supersede the execution of said orders or decrees.

Your petitioners herewith offer to your honors, a bond in due form of law, to be approved by you, and pray an allowance of a supersedeas appeal and a citation, according to law. And your petitioners as in duty bound will ever pray.

RUSSELL SAGE,
JAMES BUELL,
N. A. COWDREY.

CITY AND STATE OF NEW YORK, *ss.:*

Personally appeared before the undersigned authority, Russell Sage, James Buell and N. A. Cowdrey, and each for himself made oath that the foregoing petition is true.

Before me,

R. E. STILLWELL,
U. S. Commissioner,
Southern District of New York.

1087

1067

N/81—

Superintendent Quarantine
to Sally Love 1/81
Asks for small appointment
near Bond